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No. 1169

In the

Supreme Court of the United States

OCTOBER TERM, 1965

SUBURBAN TILE CENTER, INC., a corporation, and UNITED CONSTRUCTION AND TRADES UNION, LOCAL #102,

Petitioners-Appellants Below,

vs.

ROCKFORD BUILDING and CONSTRUCTION TRADES COUNCIL, AFL-CIO., Rockford, Illinois, Winnebago County, etal.,

Respondents-Appellees Below.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

REPLY TO BRIEFS OF RESPONDENTS

NORMAN MILLER
EARL G. SCHNEIDER
MICHAEL R. GALASSO
One East Wacker Drive
Chicago, Illinois 60601
Attorneys for Petitioners

MILLER, SCHNEIDER & GALASSO
Of Counsel

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Your Honors are herein confronted with the most significant contractual contribution that the organized magnates, business as well as labor, of the construction industry have yet devised to reshape the market places in our free economy to their liking.

While they inwardly palpitate with excitement, recognizing the ramifications ensuing from a refusal by this Court to grant the pending petition, with calculated solemnity the Respondents misrepresent the vast purview of

the instant cause, and would have this Court believe that only an isolated contract between a construction union and an employer, pertaining to on-site construction work is at bar.

The group boycott conspiracy alleged in the Petitioner's Complaint as amended, resulting from the contract between the Respondent Trades Council and the Respondent Building Contractors Association of Rockford, Inc., (multi-employers), (JA68-69), speaks of the *entire political subdivision of Winnebago County, Illinois;* only one consequence of the overall monoply occurred at the Presidential Courts Project. However, it was the weight and pressure from the all-encompassing monopolistic pact between the conspirators, (P. B., 8, 9), that flattened Suburban Tile and continues in force the group boycott that binds the multi-employers *from contracting with* any and all other contractors who do not have union-shop agreements with the local member unions of the Respondent Trades Council, within the area of Winnebago County, Illinois, as an entirety.

This Court has steadfastly held that group boycotts violate the Sherman Act. *Los Angeles Meat and Provision Drivers* v. *U. S.*, 371 U.S. 94, 83 S. Ct. 162, 9 L. Ed. 2d 150, (1962); *Klor's, Inc.* v. *Broadway-Hale Stores,* 359 U.S. 207, 79 S. Ct. 705, 3 L. Ed. 2d 241, (1959); *Northern Pac. R. Co.* v. *U. S.,* 356 U.S. 1, 78 S. Ct. 514, 2 L. Ed. 2d 545, (1958); *Columbia River Co.* v. *Hinton,* 315 U. S. 143, 62 S. Ct. 520, 86 L. Ed. 750, (1942); *Allen Bradley Co.* v. *International Brotherhood of Electrical Works,* 325 U. S. 797, 89 L. Ed. 1939, 65 S. Ct. 1533; *United States* v. *Employing Plasterers Asso.,* 347 U. S. 186, 98 L. Ed. 618, 74 S. Ct. 452; *United Mine Workers* v. *Pennington, etal.,* 381 U. S. 657, 14 L. Ed. 2d 626, 85 S. Ct. 1585.

In *Klor's, Inc.* v. *Broadway-Hale Stores,* 359 U. S. 207, 212, 213, this Court held that:

> "Group boycotts, or concerted refusals by traders to deal with other traders, have long been held to be in the forbidden category . . . For as this Court said in *Kiefer-Stewart Co.* v. *Seagram & Sons,* 340 U. S. 211, 213, 'such agreement, no less than those to fix minimum prices, cripple the freedom of traders and thereby restrain their ability to sell in accordance with their own judgment."
>
> "It clearly has, by its 'nature' and 'character', a monopolistic tendency.' As such it is not to be tolerated merely because the victim is just one merchant whose business is so small that his destruction makes little difference to the economy. Monopoly can as surely thrive by the elimination of such small business men, one at a time, as it can by driving them out in large groups."

As was stated in *Walker Dist. Co.* v. *Lucky Lager Brewing Co.,* 323 F. 2d 1, 7 (1963):

> "Group boycotts are just as illegal under the Sherman Act as group price fixing. A group boycott is a per se violation of the anti-trust laws for which there can be no justification."

A union shop agreement pertaining to a single employer, relating to a particular construction site, may be perfectly legal. However, a restrictive agreement between the entire local industry, encompassing with one stroke of the pen the major business magnates and all of their employees, providing for a group boycott of "unrecognized" employers, pertaining to an entire political subdivision, Winnebago County, Illinois, surely was not legalized by Congress, in the enactment of the proviso to 29 U.S.C. § 158 (e), (P. B. 3, 4).

Further, the Petitioners' Complaint, as amended, clearly alleges that illegal economic coercion, (JA 21), was utilized to enforce the terms of a union shop contract that the Respondent Suarez Brothers entered on November 9th, 1962, and to compel the discharge of Suburban Tile from the Presidential Courts Project.

The agreed injunction order, entered by the Circuit Court of Winnebago County, Illinois, on June 28th, 1963, (JA 59), was an aftermath of the illegal hostilities at the Presidential Courts Project and became the best artifice through which the conspirators could endeavor to put into being, at that particular battlefield, the illegal group boycott, which the Respondent Suarez Brothers had joined a week before, on June 21st, 1963, (JA 68-69). Most assuredly the "Sand Door" case, *United Brotherhood of Carpenters, et al.* v. *National Labor Relations Board,* 357 U.S. 93 (1958), was overruled in the action at bar.

If a semblance of our competitive economy is to exist within the construction industry, it will be necessary for this Court to assume jurisdiction over this action and determine whether Congress intended to sanction and remove from the embrace of the anti-trust laws, a conspiratorial group boycott, admittedly intended to eliminate and prevent so-called "substandard" employers from undercutting member contractors, within an area as vast as the entire political subdivision of Winnebago County, Illinois, by the enactment of the "Construction Site Proviso", of 29 U. S. C., Section 158 (e), (P. B. 3, 4).

Respectfully submitted,

MILLER, SCHNEIDER & GALASSO
By: EARL G. SCHNEIDER
Attorney for Petitioners

MILLER, SCHNEIDER & GALASSO
Of Counsel